

CITY OF MILPITAS STORMWATER C.3 WAIVER AND ALTERNATIVE COMPLIANCE PROGRAM

Appendix

Q

[Approved by RWQCB June 7, 2005]

In accordance with Provision C.3.g of Order No. 01-119 of the California Regional Water Quality Control Board-San Francisco Bay Region, and Chapter 7 of the City of Milpitas Stormwater C.3. Guidebook, the City of Milpitas establishes the following program to allow a development project applicant to request a waiver from the requirement to install permanent stormwater pollutant treatment measures for its project, or to be allowed to provide alternative compliance. Other NPDES permit requirements, including site design to minimize imperviousness and structural source control BMPs, may still apply. The City finds that the categories of projects eligible for a waiver or alternative compliance are appropriate because the City does not expect these projects to negatively affect water quality, or to have different water run-off volumes when compared to pre-project conditions. The City has determined that these projects will be infill or redevelopment projects on sites that were previously developed, or located within a catchment that is already largely paved. Further, these projects have the potential to reduce water quality impacts, or provide other desirable environmental benefits.

1. **ELIGIBILITY.** An applicant is eligible for a waiver from the requirement to install onsite permanent stormwater pollutant treatment measures (C.3.d) if the project is a smart growth project. An applicant is eligible to provide alternative compliance if providing onsite treatment measures is impractical or infeasible.
2. **REQUEST FOR WAIVER OR ALTERNATIVE COMPLIANCE.** The applicant must submit a written application that sets forth with specificity the project's eligibility for a waiver or alternative compliance under this program's criteria. The application must be submitted as part of a complete Stormwater Control Plan consistent with the guidance in the City of Milpitas' Stormwater C.3 Guidebook and must contain, at a minimum, the following information:
 - a. Name and location of the project,
 - b. Project description (narrative including information on project type-restaurant, shopping center, etc),
 - c. Total final design project area and percentage of imperviousness,
 - d. If applying for a waiver, an explanation of the project's eligibility for a waiver, a demonstration that stormwater runoff and treatment control measures have been incorporated to the maximum extent practicable given the constraints of the project and of the site, and a demonstration that the project complies with all other stormwater NPDES permit provisions,
 - e. If applying for alternative compliance, the amount of stormwater treatment to be provided by onsite treatment and by alternative compliance, and the type, nature, size, and location of the alternative compliance and the stormwater treatment project receiving the benefit, and
 - f. Date of anticipated project completion.

3. **WAIVER.** The City will grant a project a waiver from compliance with stormwater NPDES permit provision C.3(d) if the project is a smart growth project and the applicant has demonstrated to the City's satisfaction that (a) compliance with provision C.3(d) would be impracticable as determined under Section 4.a.i; (b) the design shows good faith efforts to incorporate Best Management Practices; and, (c) the project complies with all other stormwater NPDES permit requirements. A smart growth project is a project that falls within one or more of the following categories:
 - a. Projects located within the City's Mid-town Specific Plan area, which is the City's urban core (See **Exhibit 1**).
 - b. Projects located within the City's Transit Oriented Development Overlay Zoning District (See **Exhibit 1**).
 - c. Affordable and Senior Housing Development Projects that meet the criteria of Government Code 65589.5 (h) (3), or 65915(b).
 - d. Projects on real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminants. These properties are commonly referred to as "brownfields."
 - e. Projects located within the Transit Sub-area designated by the City Council for either or both, redevelopment involving densities of 31 or more dwelling units per acre, or for commercial or industrial redevelopments that will increase the floor area ratio from less than 1 to more than 1 (See **Exhibits 2A and 2B**)
4. **ALTERNATIVE COMPLIANCE.** If the applicant can demonstrate that onsite treatment measures would be impractical or infeasible for a project, the City will deem that the project has complied with section C.3(d) if the applicant provides alternative compliance. If a project applicant chooses to provide alternative compliance by participating in a regional stormwater treatment facility that discharges into the same receiving waters as the project site, the City will allow the applicant to provide offsite treatment measures without the need for the applicant to demonstrate impracticability or infeasibility.
 - a. **Eligibility for Alternative Compliance:**
 - i. **Impractical or Infeasible.** Project compliance is impractical or infeasible where the applicant can demonstrate that one of the following applies to the project:
 1. **Cost Constraints.** The cost of installing treatment measures on the project site would be in excess of 2% of the project costs.
 2. **Physical Constraints.** (a) The project site's size or configuration makes impossible the use of detention, conveyance of runoff, or other engineered systems, and the project site's soil is not suitable for infiltration.
 3. **Legal Constraints.** Installing treatment measures would result in the project being unable to comply with other federal, state or local regulatory requirements applicable to the project.
 - ii. **Methods of Alternative Compliance.** If the City determines the applicant is eligible for alternative compliance, the applicant may provide alternative compliance by one of the following ways, subject to the prior written approval by the City of Milpitas:

1. **Regional Stormwater Treatment Facility.** The project applicant may financially contribute to, or construct in whole or in part, a regional stormwater treatment facility to which the project stormwater discharges, and that results in the enhancement of water quality or beneficial use.
 2. **Treatment Trade.** The project applicant may financially contribute to stormwater treatment measures on another site that is within the South San Francisco Bay Drainage Basin.
 3. **Stream Restoration.** The project applicant may financially contribute to a stream restoration project that provides riparian corridor preservation or water resource protection within the South San Francisco Bay Drainage Basin.
- iii. **Level and Cost of Alternative Compliance.** Alternative compliance must result in stormwater treatment to the maximum extent practicable that (1) treats an equivalent pollutant load; or (2) provides other equivalent water quality benefits. The applicant is not required to provide alternative compliance, whether through a financial contribution or by providing equivalent treatment or benefits, in excess of 2% of the project's cost. If the applicant elects to make a financial contribution, the contribution must be made prior to issuance of the building permit for the project.
5. **DEFINITIONS.**
- a. **Project Cost.** Project cost is all costs of construction and materials for the physical improvements. It does not include the cost of land acquisition, financing, permitting, demolition, design, or off-site mitigation measures.
 - b. **Regional Stormwater Treatment Facility.** "Regional Stormwater Treatment Facility" includes regional or municipal stormwater detention or treatment facilities; in-stream or out-of-stream structures to increase the threshold flow in the stream; or structures that have been approved by any applicable Hydromodification Management Plan, or other facility as approved by the City of Milpitas.

EXHIBIT 1: CITY OF MILPITAS MID-TOWN SPECIFIC PLAN AREA WITH
TRANSIT ORIENTED DEVELOPMENT OVERLAY

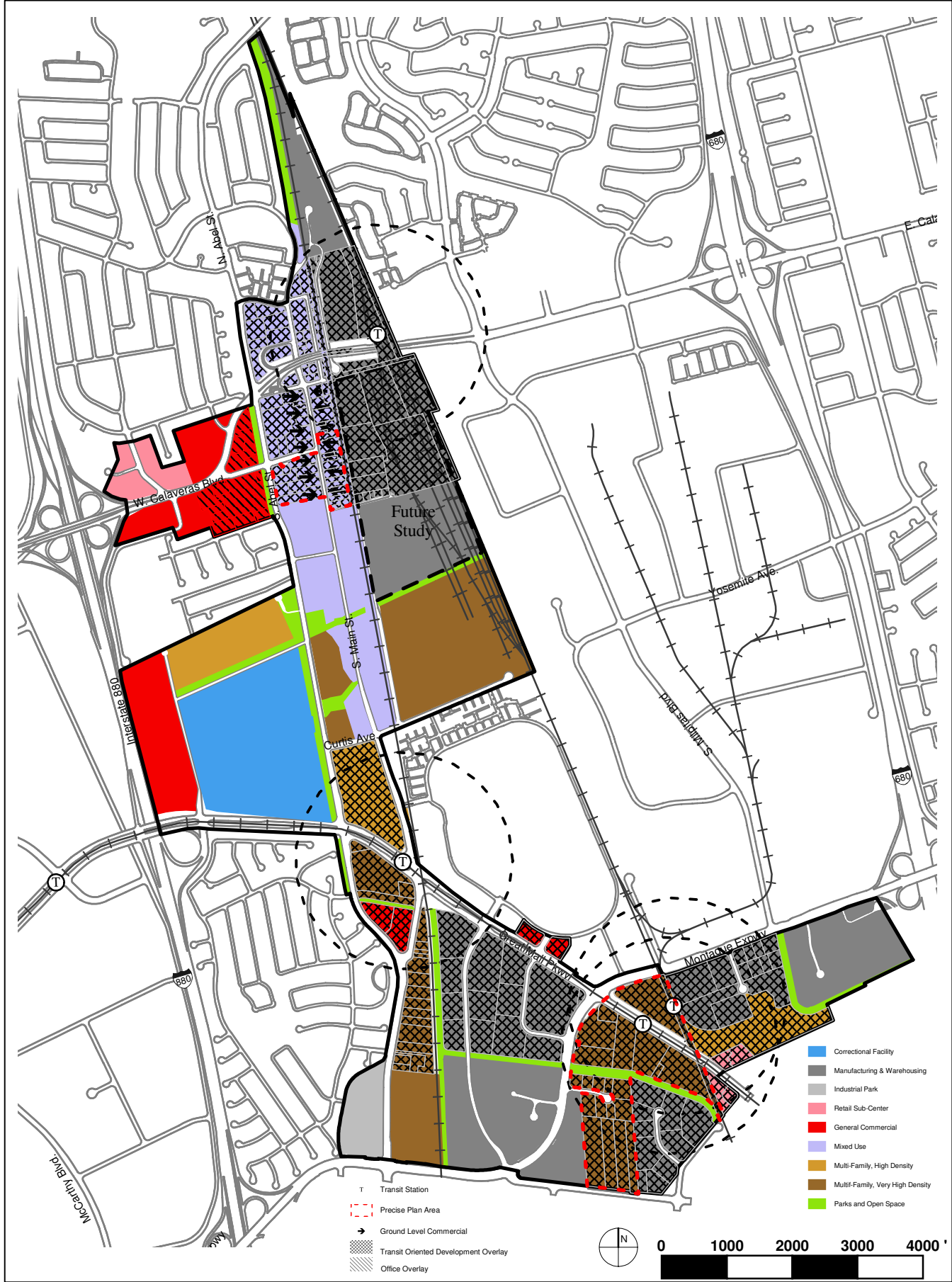


Figure 3.1: Land Use Plan

LAND USE

February 2005

EXHIBIT 2A: CITY OF MILPITAS
TRANSIT SUB-AREA CONCEPT PLAN A

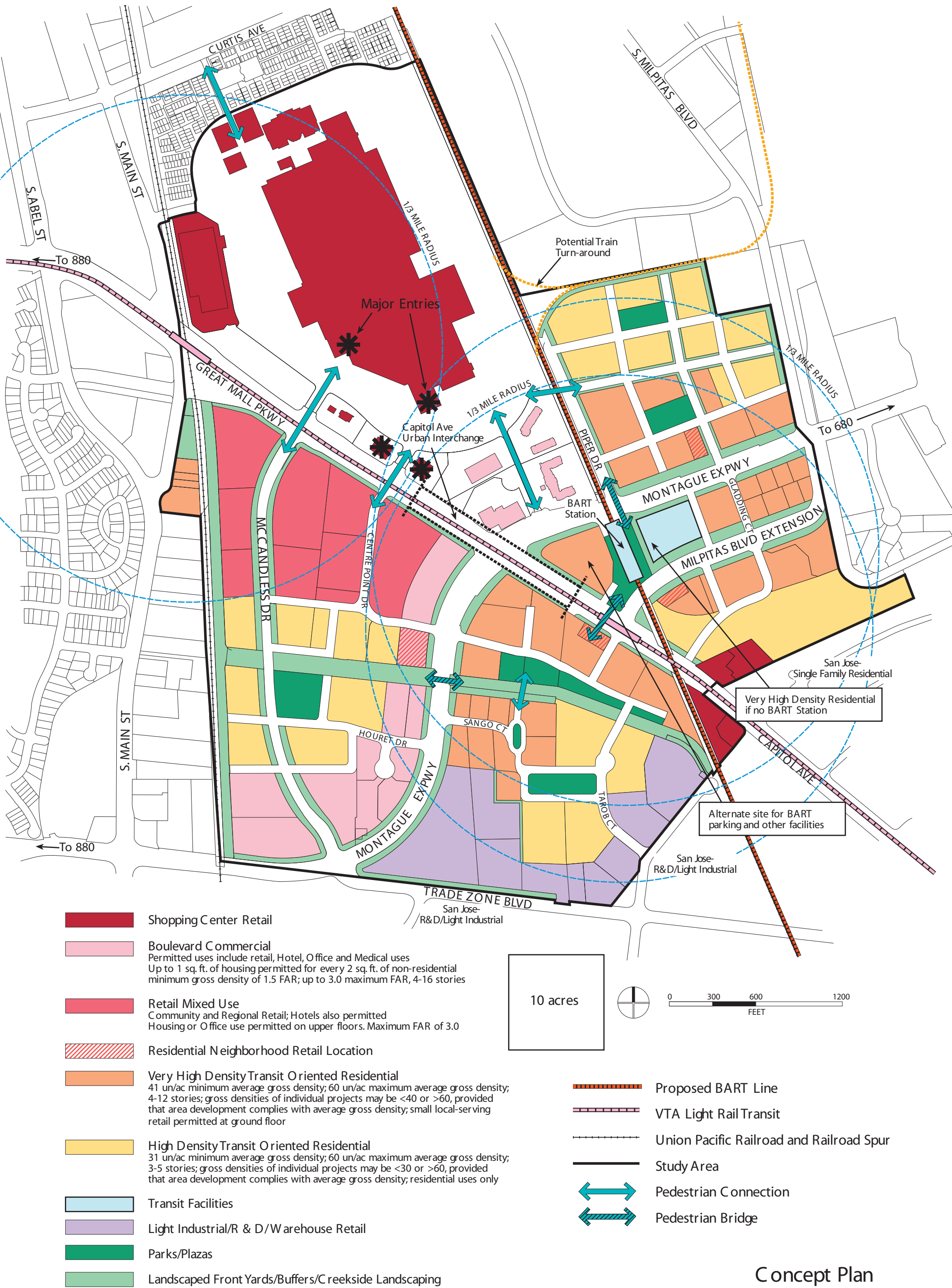
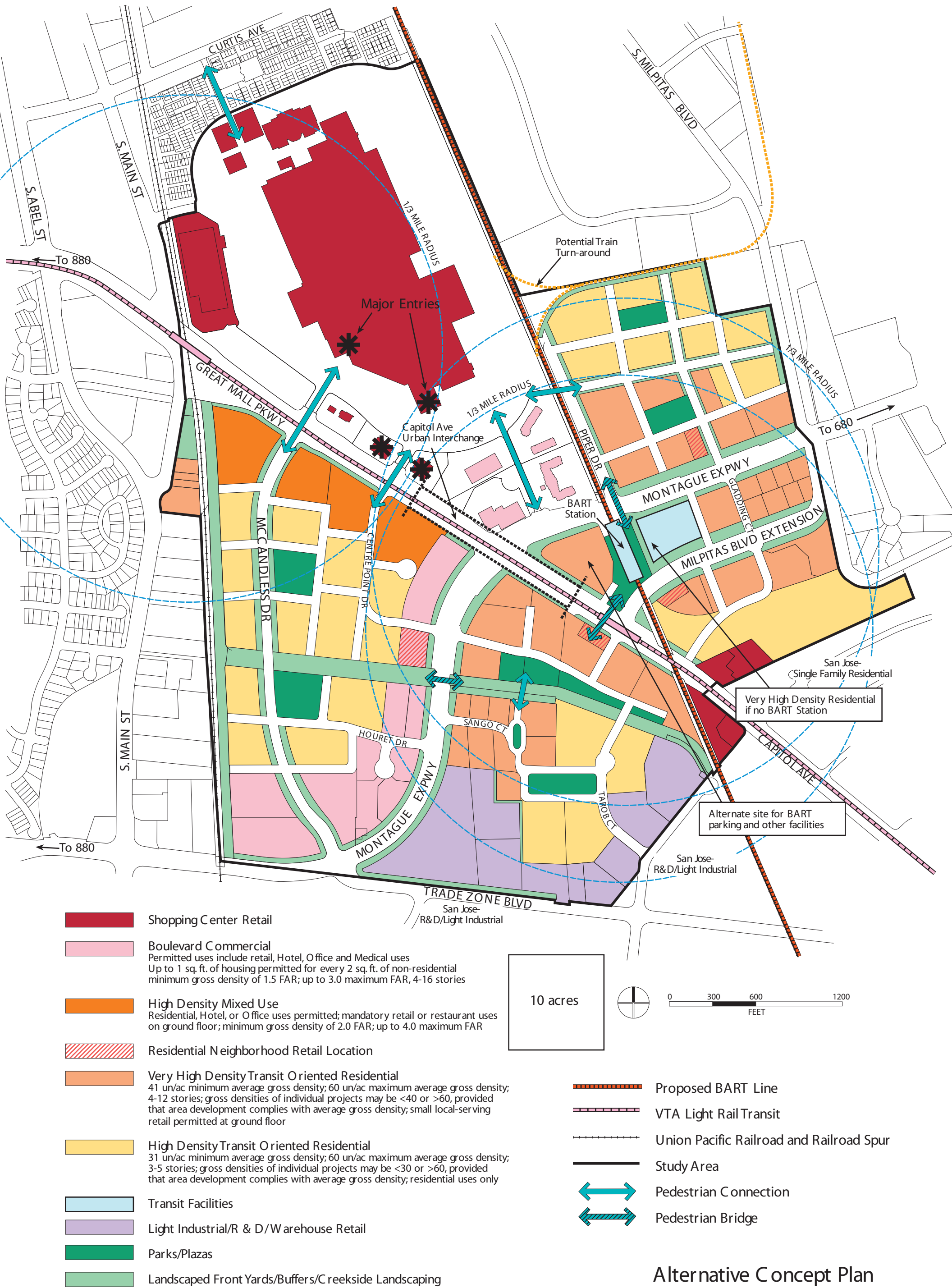


EXHIBIT 2B: CITY OF MILPITAS
TRANSIT SUB-AREA CONCEPT PLAN B



Alternative Concept Plan